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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,335	09/24/2001	Kenneth A. Klarfeld	MNI010003	2141

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EXAMINER

BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2424

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/963,335	Applicant(s) KLARFELD ET AL.	
	Examiner REUBEN M. BROWN	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/3/2010 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims have been considered but are moot in view of the new grounds of rejection. Applicant argues that the combination of references do not read on the amended claimed subject matter. Examiner respectfully disagrees, and first of all points out that the prompt in Williams, reads on the claimed '*query*', since the prompt may be in the form of a question. By presenting a list of recommended programs to the subscriber, and then prompting the instant subscriber to select one of the recommended programs, the subscriber's selection of a program or non-selection of the program, but then subsequent selection of a different program, reads on the claimed '*answering a query*'. As for the additionally claimed,

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'receiving feedback input from the viewer after viewing the list, and in response to the viewer answering a query', feedback is broad enough to read on the subscriber's response to the prompt.

Williams teaches that if the subscriber does not select one of the recommended programs for viewing, then the system may prompt, i.e., present a query as to whether the subscriber would like to record one of the programs. Either way, the subscriber's non-selection of any of the recommended, but then subsequent selection of a different program, causes the subscriber's profile/preference to be updated, which will then cause a different list of recommended to be displayed for the instant subscriber.

Applicant also argues that the rejection does not present a valid motivation to combine the references. Examiner respectfully disagrees, first of all, all of the references are in the same field of endeavor of providing reduced lists programming to subscribers for the purpose of reducing the time required by the instant subscriber to select a program that would likely be desirable. Williams provides a clear motivation for the improvement over Herz, by prompting/querying the subscriber as to test a particular list and to then create a subsequent list(s) based on that feedback. Since the prompt in Williams corresponds to the claimed 'query', the subject matter is met.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Herz, (U.S. Pat # 5,758,257), in view of Williams, (U.S. Pat # 5,945,988) and Ellis, (U.S. Pat # 6,898,762).

Considering amended claims 20 & 28, the claimed method of displaying a TV program to a viewer, comprising 'processing information indicative of preferences of the viewer to develop a viewer characteristic information profile for the viewer' is met by Herz, col. 10, lines 6-55; col. 11, lines 15-65 thru col. 12, lines 1-55; col. 14, lines 10-65, col. 15, lines 10-60.

'Storing the viewer characteristics information profile on a viewer storage device', is met by col. 40, lines 21-65; col. 41, lines 1-15; col. 45, lines 9-30. 'Presenting the viewer with **a first** list of TV programs available for viewing, the programs **selected in accordance** with the characteristics information profile', is met by Herz, col. 23, lines 1-18 & col. 25, lines 49-67, which teaches virtual channels of recommended programs or highlighting recommended

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programs on an EPG or re-ordering the list of programs on the EPG, based on the instant customer's profile.

Regarding the amended claimed feature of 'receiving feedback input from the viewer after viewing the first list, the input requesting different selections *than in the first list*'; Herz discloses that the system determines if the customer actually watched the video programs that were recommended by the agreement matrix, col. 26, lines 51-67; col. 31, lines 5-14; col. 46, lines 42-49, for the purpose of adjusting the agreement matrix of a particular customer.

If the customer did not select/watch the predicted program(s), then the system adjusts the customer's profile, based on what program(s) was actually watched. Therefore the disclosure of Herz, reads on the claimed subject matter, since after the agreement matrix is updated, then the customer would be given an updated/adjusted (i.e., different) list of recommended programs, in light of what was actually requested by the customer, see col. 27, lines 1-6; col. 41, lines 8-14; col. 41, lines 57-63.

As for the amended feature, '*wherein the viewer characteristics information profile and the alternative characteristics information profile coexist and the first list and the second list remain available to the viewer*', Herz does not explicitly teach such a feature. Nevertheless Ellis, which is in the same field of endeavor, teaches an interactive EPG that presents customized lists of programs based one or more customer profiles, col. 14, lines 11-36; col. 20, lines 17-67. Ellis furthermore teaches that the user may insert and use multiple profiles. In particular the multiple profiles may be active at the same time, col. 15; col. 16, Fig. 14. It would have been obvious for

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one ordinary skill in the art at the time the invention was made to modify Herz with Ellis, at least in order to allow the user have more than one active profile.

Ellis reads on the claimed subject matter because the reference clearly teaches that not only can the user activate different profiles, such as profile #1-profile #x; but also once the user is presented with a list of recommended programs based on the settings of the active profile(s), see Fig. 15 & Fig. 16a, later the instant user can change one or more of the setting(s) of the active profile(s), which will then present a different set of programs based on the current settings, see Fig. 16b-16c; col. 16, lines 34-61. All of these profiles coexist and remain available to the user, since these profiles can be saved, via the save agent 147 shown on Figs.13a-13f, col. 13, lines 27-55.

As for the additionally amended claimed feature, 'receiving feedback input from the viewer, after viewing the first list, and in response to the viewer answering a query... the feedback input requesting different *inputs than the first*', the subject matter reads on the subscriber in Williams foregoing any selection from the recommended list, but instead choosing a different program, which then causes the associated profile/preference to be updated. These selections correspond with feedback.

As for 'presenting the viewer with a second list, in response to feedback input requesting *different selections, different than in the first*', including alternative TV programs for viewing, the alternative list selected in accordance with *an alternative characteristics information profile*'

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for presenting the viewer with a second list, in response to the feedback, still reads on the combination since the viewer in Williams is given a second list of recommended programs based on the feedback, see (Fig. 3; Fig. 4; col. 11, lines 21-60). If the viewer in Williams decides not to view or record any of the shows, then the system continues to monitor the viewing habits of the viewer and will subsequently provide a different list of programs, which is feedback. Thus Williams teaches presenting a second list of programs based on feedback from a viewer, from answering a query.

It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of prompting, i.e., '*query*' the user of a recommended list to select a program from the instant list or another list that will be provided, such that a second list would be created based on the result of the user's interaction with system, in response to the '*query*', i.e., feedback. This is motivated by the advantage of providing new suggestions to the viewer, as explicitly taught by Williams; see col. 12, lines 1-15. If the viewer did not select any programs from the first list, then it is desirable to provide the user with a different list of programs, based on the goal of updated viewing habits and preferences of the instant viewer, col. 1, lines 62-67 thru col. 2, lines 1-15

In another example, in Williams the system will monitor the habits of viewer for a certain period of time, and based on the history suggest user profile, along with the associated programming, col. 9, lines 64-67 thru col. 10, lines 1-25. The user is explicitly prompted with the question as to whether the user profile selected by the system, is in fact the correct user profile

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for the person currently using the system. If the wrong profile is selected, then the system will likely make ineffective listings of recommended programs. Therefore the system takes feedback from the user, via a query, in order to provide programming that is most desirable to the instant user.

Considering claim 21, the claimed subject matter is met by Herz, col. 29, lines 1-26.

Considering claim 22, the claimed subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Considering claims 23-27, Herz meets all subject matter, col. 17, lines 35-65; col. 23, lines 1-15; col. 26, lines 5-65; col. 46, lines 1-20.

Considering claims 29-31, see Herz, col. 26, lines 1-21; col. 29, lines 1-25; col. 29, lines 30-65 & col 45, lines 20-65; col. 49, lines 1-10.

Considering claim 32, the claimed method for presenting TV programs to a viewer, comprises steps that correspond with subject matter mentioned above in the rejection of claim 20, and is likewise treated. As for the additional feature, of the 'first list arranged without viewer *input*', in Herz the arrangement of the virtual lists are without user input, col. 45, lines 35-45.

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Considering claim 33, the claimed subject matter reads on the user in Herz manually selecting a different program, not on the recommended list of programs using a remote control device, such as remote control device 1008, see col. 46, lines 42-60; Fig. 10.

Considering claim 34, by definition, at least some of the programs presented to the customer in Herz, based on an agreement matrix re-calculated as a result of an adjusted customer profile, would be different from the first list of recommended programs, as long as the programs that were actually watched by the customer had content attributes different from the content attributes of the programs in the first recommended list of programs.

Considering claim 35, since Ellis teaches that each profile may be saved, via save agent 147, each corresponding list would necessarily remain available to the user, see Figs. 9a-9b; Fig. 11; Figs.13a-13f; col. 13, lines 25-55.

Considering claim 36, the second list in Williams is unrelated to the first list, as to the extent that the viewer's profiles & preferences change due to a different or unrelated viewing history.

Considering claim 37, in Ellis the viewer is enabled to activate a particular profile, from a plurality of profiles, i.e., '*alternative available lists*', which will then display a particular set of recommended programs.

Considering claims 38-42, Ellis teaches all subject matter, see col. 15, lines 1-28; col. 15, lines 55-64; col. 16, lines 15-61; col. 19, lines 45-62; col. 20, lines 17-59; col. 23, lines 51-60.

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Any response to this action should be mailed to:

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or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REUBEN M. BROWN whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Reuben M. Brown/
Patent Examiner, Art Unit 2424